

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY  
CC Docket No. 96-149

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In The Matter of

IMPLEMENTATION OF THE NON-  
ACCOUNTING SAFEGUARDS OF  
SECTIONS 271 AND 272 OF THE  
COMMUNICATIONS ACT OF 1934,  
AS AMENDED

**FURTHER REPLY COMMENTS OF THE  
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby replies to comments submitted by other parties in response to the Further Notice of Proposed Rulemaking, FCC 96-489, released by the Commission in the captioned docket on December 24, 1996 (the "Further Notice").<sup>1</sup>

In its Further Comments, TRA generally supported the reporting requirements proposed in the Further Notice, but urged the Commission to modify the method, increase the frequency, and enhance the detail of the mandated reports. Among other things, TRA recommended that the Commission:

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<sup>1</sup> Parties submitting comments in response to the Further Notice include AT&T Corp. ("AT&T"), MCI Telecommunications Corporation ("MCI"), Sprint Corp. ("Sprint"), Teleport Communications Group, Inc. ("Teleport"), Ameritech, the Bell Atlantic Telephone Companies and the NYNEX Telephone Companies ("Bell Atlantic/NYNEX"), BellSouth Corporation ("BellSouth"), Pacific Telesis Group ("PacTel"), SBC Communications Inc. ("SBC"), and U S WEST, Inc. ("U S WEST").

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- In order to ensure that small to mid-sized carriers have reasonable, affordable access to Section 272(e)(1) compliance data, either direct the Bell Operating Companies ("BOCs") to file such data with the Commission or to make such data available on the Internet or through other readily-accessible electronic media.
- At least for the foreseeable future, require the BOCs to update their Section 272(e)(1) compliance data at least monthly and to retain it for up to three years.
- Consider expansion of the scope and number of reporting categories and to utilize actual results rather than percentages, means and averages.
- At a minimum, require the disaggregation of Section 272(e)(1) compliance data by the BOC and each BOC affiliate and by individual state, but to consider further data disaggregation by exchange and within service categories.

A number of the commenting BOCs endorsed the Further Notice's suggestion regarding the posting of Section 272(e)(1) compliance data on the Internet.<sup>2</sup> Thus, SBC advised that it "would make the information available, compiled and organized on a state-by-state basis, on its home page on the Internet."<sup>3</sup> For its part, Ameritech stated that it "would be willing to place on the Internet whatever information is finally deemed necessary, in order to make it accessible by all interested parties."<sup>4</sup> Even U S WEST "support[ed] the provision of this compliance information electronically,"<sup>5</sup> creating a near consensus among the commenting

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<sup>2</sup> Notice, FCC 96-489 at ¶ 370.

<sup>3</sup> SBC Comments at 3 - 4.

<sup>4</sup> Ameritech Comments at 5.

<sup>5</sup> U S WEST Comments at 3 - 4.

parties.<sup>6</sup> Seemingly only BellSouth opposes electronic access to Section 272(e)(1) compliance data, purportedly on confidentiality grounds.<sup>7</sup> As Sprint correctly noted, however, "[b]ecause the subject report is publicly available information, the BOC[s] need not be concerned that posting this information electronically presents a threat to confidential BOC data."<sup>8</sup>

There is likewise BOC support for reasonable reporting intervals and data retention requirements. Thus, for example, SBC recognize[d] that Section 272(e)(1) compliance data should be updated "on a monthly basis," although the carrier suggested a data retention requirement of only one year.<sup>9</sup> Other BOC commenters resisted monthly updates, urging that "updating should be required no more frequently than quarterly" or annually, but a number of these carriers suggested retention periods of two years.<sup>10</sup> No BOC, however, argued these points vigorously, relying instead on summary references to purported administrative burdens and inconsistencies with current reporting requirements.<sup>11</sup> Thus Ameritech noted that it "feels that updating should be required no more frequently than quarterly, as is done for ONA."<sup>12</sup> And

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<sup>6</sup> See, e.g., AT&T Comments at 14 - 17; MCI Comments at 2 - 3; Sprint Comments at 5 - 6.

<sup>7</sup> BellSouth Comments at 2 - 3.

<sup>8</sup> Sprint Comments at 6.

<sup>9</sup> SBC Comments at 3 - 4, 7 - 8.

<sup>10</sup> Ameritech Comments at 17; *see also* U S WEST Comments at 9.

<sup>11</sup> See, e.g., PacTel Comments at 12; U S WEST Comments at 8 - 10; Ameritech Comments at 16 - 17.

<sup>12</sup> Ameritech Comments at 17.

PacTel simply stated that monthly reporting would be "unreasonably burdensome" and "[in]consistent with industry practices."<sup>13</sup>

These conclusory assertions are wholly inadequate counters to the facially compelling need for current data. As TRA explained in its Comments, a BOC which is preferring itself or its affiliates in the service provisioning/restoration process is inflicting immediate and serious harm on competitors. That harm is reflected in damage to competitive reputations which cannot be undone and lost business opportunities which cannot be recaptured. Given that remedies by necessity have prospective impact only, it is imperative that they be promptly available. SBC had it right that monthly updates strike a reasonable balance between regulatory effectiveness and minimization of administrative burdens.<sup>14</sup> U S WEST's contention that the Commission's eventual relaxation of ONA reporting requirements suggests that annual updating of Section 272(e)(1) compliance data is sufficient misses the point.<sup>15</sup> As TRA stressed in its Further Comments, the frequency with which data must be updated to be meaningful will diminish as competition takes hold in the local market; it is in the short term that frequent updates are imperative.

The greatest differences of opinion among the commenters arise with respect to the levels of aggregation at which BOCs should be permitted to maintain Section 272(e)(1) compliance data and the scope, number and form of the service categories and measurement units incorporated into the reporting requirements. As to the former, SBC once again had it right, at

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<sup>13</sup> PacTel Comments at 12.

<sup>14</sup> SBC Comments at 3 - 4, 7 - 8.

<sup>15</sup> U S WEST Comments at 8.

least in part. SBC recognized that compliance data should be broken down at least on a state-by-state basis.<sup>16</sup> U S WEST's suggestion that data can be aggregated across fourteen states and provide any meaningful insights is borderline absurd.<sup>17</sup> No more defensible are BOC proposals that data be aggregated across affiliates and among the BOC and its affiliates, particularly when the basis for such claims are Congressional intent and protection of confidential data.

As the Commission has recognized, "BOC entry into in-region interLATA services raises issues for competition and consumers."<sup>18</sup> Moreover, the Commission understands that "[b]ecause the BOC has the incentive to provide its affiliate with the most efficient access," Congress adopted "[t]he structural and nondiscrimination safeguards contained in section 272 [to] ensure that competitors of the BOC's section 272 affiliate have access to essential inputs, namely, the provision of local exchange and exchange access services, on terms that do not discriminate against the competitors and in favor of the BOC's affiliate."<sup>19</sup> And, of particular pertinence here, the Commission has emphasized the adverse competitive impacts of discriminatory service provisioning/restoration:

[I]f competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the

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<sup>16</sup> SBC Comments at 3 - 4; *see also* PacTel Comments at 13.

<sup>17</sup> U S WEST Comments at 9.

<sup>18</sup> First Report and Order, FCC 96-489 at ¶ 10.

<sup>19</sup> Id.

same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged.<sup>20</sup>

The Commission has recognized that vigilant and vigorous enforcement of statutory and regulatory mandates is vital during "the transition from monopoly to competition;" indeed, failure to meet this responsibility, the Commission has conceded, may render ineffective its efforts and the efforts of Congress to open all telecommunications markets to competition.<sup>21</sup> Reporting requirements are a key enforcement tool. As the Commission has recognized, reporting requirements "act to deter potential anticompetitive behavior by requiring BOCs to provide objective proof of their compliance with the separate affiliate and nondiscrimination requirement . . . [and] enable competitors, as well as the Commission, to detect any potential violations of these requirement."<sup>22</sup>

Reporting requirements are only effective in deterring, and facilitating the detection of, statutory/regulatory violations if the data they generate is meaningful. Data which is aggregated to too great a degree or which can be easily manipulated to produce false or misleading results is useless for enforcement purposes. Aggregating data from all states served by a BOC or from all of a BOC's affiliates or even from the BOC and all of its affiliates would produce data which would not permit detection of discriminatory conduct. Higher levels of aggregation provide greater opportunities for strategic manipulation of data. As TRA pointed out

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<sup>20</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, ¶ 518 (released August 8, 1996), *pet. for rev. pending sub nom. Iowa Utilities Board v. FCC*, Case No. 96-3321 (8th Cir. Sept. 5, 1996), *recon.* FCC 96-394 (Sept. 27, 1996), *further recon. pending* ("Local Competition First Report and Order").

<sup>21</sup> Id. at ¶ 20.

<sup>22</sup> First Report and Order, FCC 96-489 at ¶ 321.

in its Further Comments, even state level reporting allows a BOC to disguise discrimination by preferring its or its affiliates' activities in competitive areas while maintaining longer service intervals in noncompetitive areas, thereby producing lower average response times. It is for this reason that TRA has urged the Commission to consider reporting on an exchange basis in the short term.

As to aggregation of data derived from multiple BOC affiliates and even the BOC itself, the statute requires otherwise. Section 272(e)(1) clearly differentiates between the BOC and its affiliates, making individual references to each. Moreover, the strategic manipulation that could occur if data from multiple states were aggregated could likewise arise out of the aggregation of multiple companies.

Generation of meaningful data also underlies TRA's suggestions, as well as the recommendations of other commenters, regarding the scope, number and form of the service categories and measurement units that should be utilized to produce Section 272(e)(1) compliance data. Initially, TRA wholeheartedly agrees with AT&T and Teleport that the plain language of Section 272(e)(1) mandates nondiscriminatory fulfillment of requests for telephone exchange service as well as for exchange access service.<sup>23</sup> While the Further Notice, having characterized Teleport's reporting proposals here as "directed toward the implementation of local competition by incumbent LECs," tentatively concludes that the scope of the proposals considered in this docket should be limited "to requirements necessary to implement the service interval

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<sup>23</sup> AT&T Comments at 11 - 14; Teleport Comments at 9 - 11.

requirements of section 272(e)(1),"<sup>24</sup> TRA agrees with AT&T and Teleport that the reporting requirements the Commission adopts here should be designed to ensure the nondiscriminatory provisioning of both exchange service and exchange access service.

Finally, TRA reiterates its view that in at least the short term, the Commission should err on the side of more, rather than less, detailed reporting requirements. Certainly, a balance must be struck between the administrative burden imposed on the BOCs and the compelling need of competitors to ensure BOC compliance with the nondiscrimination requirements of Section 272(e)(1). As noted above, this balance will evolve over time as competition emerges in the local exchange/exchange access market. For now, the Commission should go the extra mile to ensure that the BOCs are not impeding long distance or local competition. To this end, the Commission should give serious consideration to the additional reporting requirements proposed by AT&T, MCI, Sprint and Teleport, particularly those relating to the quality, in addition to the timeliness, of BOC performance.<sup>25</sup> Certainly, each additional reporting requirement imposes an additional burden on the BOCs, but if those additional requirements speed the competitive availability of service, they will ultimately result in a quicker relaxation of regulatory oversight and a reduced administrative burden. Moreover, as succinctly put by AT&T:

In light of § 272(e)(1)'s clear and unequivocal nondiscrimination requirement, and the Commission's finding that the information necessary to detect violations will not be available absent data

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<sup>24</sup> First Report and Order, FCC 96-489 at ¶ 382.

<sup>25</sup> AT&T Comments at 2 - 14; MCI Comments at 3 - 9; Sprint Comments at 2 - 4; Teleport Comments at 3 - 14.

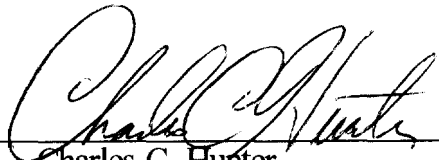


disclosure requirements, [whatever minimal burden is imposed on the BOCs] is entirely justified.

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to adopt rules and policies in this docket consistent with these Further Reply Comments and its earlier-filed submissions.

Respectfully submitted,

**TELECOMMUNICATIONS  
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